



**2009**



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21	1.2
31	1.1.2
34	2.1.2
34	2.2
41	1.2.2
62	2.2.2
62	3.2
67	1.3.2
	2.3.2
74	:
	1.3

75		1.1.3
85		2.1.3
89		2.3
90		1.2.3
100		2.2.3
111		3.3
111	" "	1.3.3
115		2.3.3
121		4.3
	2001 (85)	
121		1.4.3
130		2.4.3 مدى الاعتماد بالتوقيع الإلكتروني كدليل في الإثبات
137		
138		
140		
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**الصفحة**

147

149

151

153

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157

Hash function

159

(ATM)

161

163

*2009*



**Abstract**

**Authentic electronic signature in civil and commercial transactions Comparative study**

**Eman Abdulmajeed Al-Awabdeh**

**Mu'tah University, 2009**

The scientific development of information technology has come up with anew form of "writing". The traditional form of writing is no longer able to achieve its purpose ,particularly in electronic transactions in both civil and commercial matters. The E-Commerce has necessitated the use anew form of authentication tool; it is the Electronic Signature which consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document. There exists many legal and practical issues regarding the legal value of Electronic Signature in proof .Although E-messages may often include information about the entity sending a message ,that information may not be accurate .E-signatures can be used to authenticate the source of messages.When ownership of a digital signature secret Key is bound to a specific user, a valid signature shows that the message was sent by that user. The importance of these issues has led the International organizations to draft model laws on E-Commerce and E-Signatures.

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- (1)
- .327 2005
- (2)
- .78-77 2006
- (3)
- .20 1999
- (4) Berlioz –Houin (B.) et Berlioz (G.): le droit des contrats face a l'evolution econiomique, etudes a R. Houin 1985, p. 11.

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1991

.125

une inscription " :<sup>(1)</sup> "Robert"  
 qu'une personne fait de son nom (sous une forme particuliere et  
 constitue) pour affirmer l'exactitude.la sincerrite du'n ecrit ou en  
 assumer la responsabilite".

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"constitue une signature valable toute marque distinctue et personnelle manuscrite permettant d'individualiser son doute possible et traduisant la volonte non equivoque de celui-ci de consentir a l'acte."<sup>(4)</sup>

"La signature de l'acte est la seule formalite essentielle pour la validite des actes sous seing prive"<sup>(5)</sup>.

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(1) Deverys (C.): du sceau numrique a la signature nrmrique, Rops.OJ,T.L, 33.Dhenin , vers une adminstration sans popier, paris, la documentation francaise, 1996,P.96.

(2)

.12 1993

1993/1/14 137-28-44

(3)

(4) Paris 22 mai 1975, D. 1976, Somm. 8.

(5) Cass. Civ. 15 juill . 1957:D. 1957, somm. 143.

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1963

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2005

16

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.302

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1986/3/6

52

2138

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Ghestin (J), et Goubleaux (G.): triate de droit civil, introduction generale, 3e ed., paris, 1990, p. 590.

.357

-29

-1978 /1/31

4

527

(3)



16) 1966/380 (110)  
 : (1966  
 'la letter de change contient :... 8-la signature de celui qui emet  
 la letter (trieur) cette signature est appose, soit a la main, soit  
 par tout procede non manuscript

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.49 2003

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.178

.58 -16 -1965/1/14 30 (15) (4)

(5) C. A., paris , 22 mai 1978, D 1979, somm, p. 8.

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1966

(12)

(156)

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-2"

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.23

2003

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1998

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.64

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- 1" :

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.236      1997

.143-1006-14

1963

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(4) Ghestin (J). et Goubleaux (G.): op. cit, 590.

(5) Cass. civ. 15 mai 1993, R.T.D.civ. 1994, 167.

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1966/7/16

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.131	-3	-17	-1966/6/2	33	4		(2)
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.25	2007			-			
			.81				(4)

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. 60 2803 1991/3/4 (1)

": (93 ) (2)

".... (3)

.194 (4)

. 47 596 1982/12/28 (5)

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1988	(24)		<hr/>	1/87	(1)
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-1 :	2005	(16)		1/6	(2)
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		.85	-		(3)
.	2008-2-\18	2007-2057			( 4)



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(2) ( )  
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.84-83

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1998-5-19 1998-449 (1)

.1998-1-1 5 548

1323 89-268-26 1975 28 (2)

.86 (3)

: 1323 (4)

"Ses heritiers ou ayants cause peuvent se contenter de declarer qu ils  
ne connassent point lecriture ou la signature de leur auteur".

. 1958\11\13 52 539 (5)

(1)

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.222-221

.90

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.97

.231-228

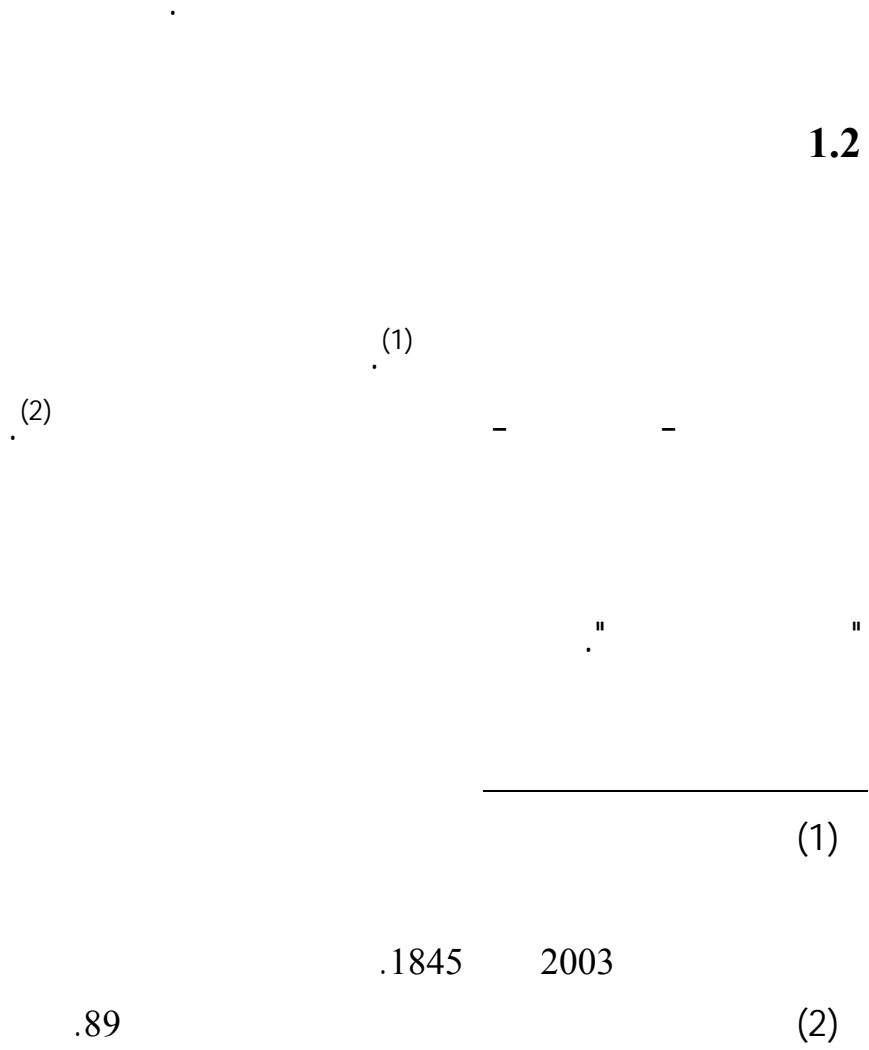
.96

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### 1.1.2

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**.1**

1996

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2000/ 29-18

$$\binom{1}{1}$$

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.25      2004

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" : /2 )

(2)  $\parallel$

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**-2**

1998/ /13

.1999/ /29

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.223-222

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(1) (1)

"les Etats veillent a' ce que leur systeme juridique rende possible la conclusion des contrats par voie elctronique. Les Etats member's assurent notamment que le regime juridqiue applicable en processus contractual ne fasse pas abstacle aI utilization des contrats electroniques au ne conduise pas a priver d'cefect et de vabiclite juridique de tells contrats pour le motif qu'ils sont passe's par voie electronique".

2004

.55

- (2) Sinis vinenzo , digital signature legislation in Europe, international business lawyer, December 2000, vol 28 , no 11, p 487, laetitia Rolin jacquemyns Et thibault verbiest , L'offre De services et de prouduits financiers sur intend , p.19 .
- (3) Sinis vinenzo, digital signature legislation in Europe, international business lawyer, December 2000, vol 28, no 11, p 487, laetitia Rolin jacquemyns Et thibault verbiest, L'offre De services et de prouduits financiers sur intend, p. 19 .
- (4) Sinsi Vienzo , digital signature legislation in Europe , op , cit. pp. 487-490.



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(1)

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.1

(9/102)

2000/10/1

2000/6/3

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.1851

(2) 102/9 "an electronic sound symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record".

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(2)

.3

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.44 2007

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" "

271 /98

(3) John D. Gregory, Canadian and American legislation on electronic signatures with reflection on the European union directive, p15 .

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[http:// pages. Ca. inter.net/~euclid1/esiglaws.htun](http://pages.Ca.inter.net/~euclid1/esiglaws.htun)

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 : <sup>(1)</sup>1999 30-23 (A/9)

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( /9) (1)

1999

(9/a) : " An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable".

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2004 (15)

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2002 (2)

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.2001 (85)

.2004 (15)

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) 2002 (2)

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(4)  $\parallel$

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.83

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.173

2007

2004

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## 2.1.2

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uncttral law of electrons signature

.173

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35

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E.davio Internet face au deroit, Cahier du C.R.I.D., N12; Ed :

Story Scientica, 1997, p. 80.



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(1)"

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(2)

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.591

2003

12-10

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.38

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1989

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"The digital signature is a short unit of data that bears a mathematical relationship to the data in the document's content"<sup>(4)</sup>.

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.41 (1)

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(2)

.246

1989 8 (3)

Cass. Civ., 8 novembre.1989, . cre'dicas

Dalloz, 28 Juin 1990 m n.25. (4)

.44

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**2.2**

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**1.2.2**

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:()

) (Biometric signature)

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(1)

finger prints

(2) voice recognition

retinal scan

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.158 2006

.424

(2)

.53

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2001

28-26

.19

24

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(1)

( ) "Pen-op" :

Electronic pen

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.41

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.112

1998

(1)	.			
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	.The signature capture service	.1		
(2)	. The signature verification service	.2		
	:			
	( ) :(personalidentification number)			
	"ATM"			
	.			
(3)	oK. (PIN)			
	.			
(4)				
	- -			(1)
		.52		
	.422			(2)
	.94-93			(3)
				(4)
		.54		

(1)

**(Digital Signature)**

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(2)

## .Encryption

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:Symmetric "

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## Asymetrique

(3)  $\parallel$

(1)

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.42

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<sup>(4)</sup> (HASH)

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(1)

.185 2002

(2)

Schneier (B) :Cryptography Applique International Thomas, on  
Publishing Frame 1994, P.197

.61

(3)

: (Hash Function)

(4)

" " " "



(6) .

(1)

(2)

(on- line)

" "

(3)

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[www.sheikhmohammed.com.ae](http://www.sheikhmohammed.com.ae)

.94-93

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.197

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(3)

.239 2000

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### 2.2.2

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1914

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**:Debit Card ( ) -1**

(on-line)

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(4)

(off-line)

.279

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(2)

.130      2004

.102

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1999

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.31-30

(1) "la carte bleu" :

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**Charge Card " " -2**

(2)

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3) (ATM) Automated Teller Machine -3

.123 (1)

.133 (2)

.30 (3)

(1)

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(2) " "

**Credit Card : -4**

(3)

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13 (1)

" 19

.12 2000 10 19 "

(2)

1996/ /17-16

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.4 2000/ /3

-30 2008 (3)

.31

.American express<sup>(1)</sup> visa-master card

**Internet Card :** -5

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-1

-2

-3

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(password)

(user ID)

.expiration (date)

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.38-37 2002

(E-

.<sup>(1)</sup> count)

(8 ) **Smart Cards :** -6

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(biometrics)

.<sup>(2)</sup>

.<sup>(3)</sup>

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.137-136 (1)

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.54 1999

.141 (3)

	(Microprocessor)	
	(1)	
	:	
		-1
	(Citibank)	-2
	(2)	
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		-1
		-2
		-3
1997		
"European Initiative in Electronic Commerce" (3)		
		(1)
	.31	
P36		(2)
	.33	

(3) The economic and social committee of the regions :An European Initiative in Electronic commerce communication to the European parliament, the council: com( 97) 15.



:(PIN)

-1

-2

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(2)

.116

(1)

.39

(2)

(E-electronic)

(business to consumer)

(<sup>1</sup>) Thomson west: E-commerce, The Internet, and law Cases and materials, American Casebook Series, p 51-53

.13

(<sup>2</sup>)

(<sup>3</sup>)

2 72

(<sup>4</sup>)

.12 2006

<http://www.al-jazirah.com/digimag/15022004/elc74.htm> (<sup>5</sup>)

(business to business) .2

<sup>1</sup>( E- bay)

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**(Electronic- checks) :** -1

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[/http://ar.wikipedia.org/wiki](http://ar.wikipedia.org/wiki) (1)

.17

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clearing house ( )

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(123) 1996/16 (1)

.371-370 (2)

92 (3)

.70

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(1) Kosiur, David. Understanding Electronic Commerce, Microsoft Press, USA,1997, p. 51-52.

" (2)

2000 237 20

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116

" 117 (3)

.27 "

(4) Kosiur, David. Understanding Electronic Commerce, Microsoft Press. USA, 1997, p. 53.

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(24 23 22 21 20)

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(1)

**(E- BILL OF LADING ):**

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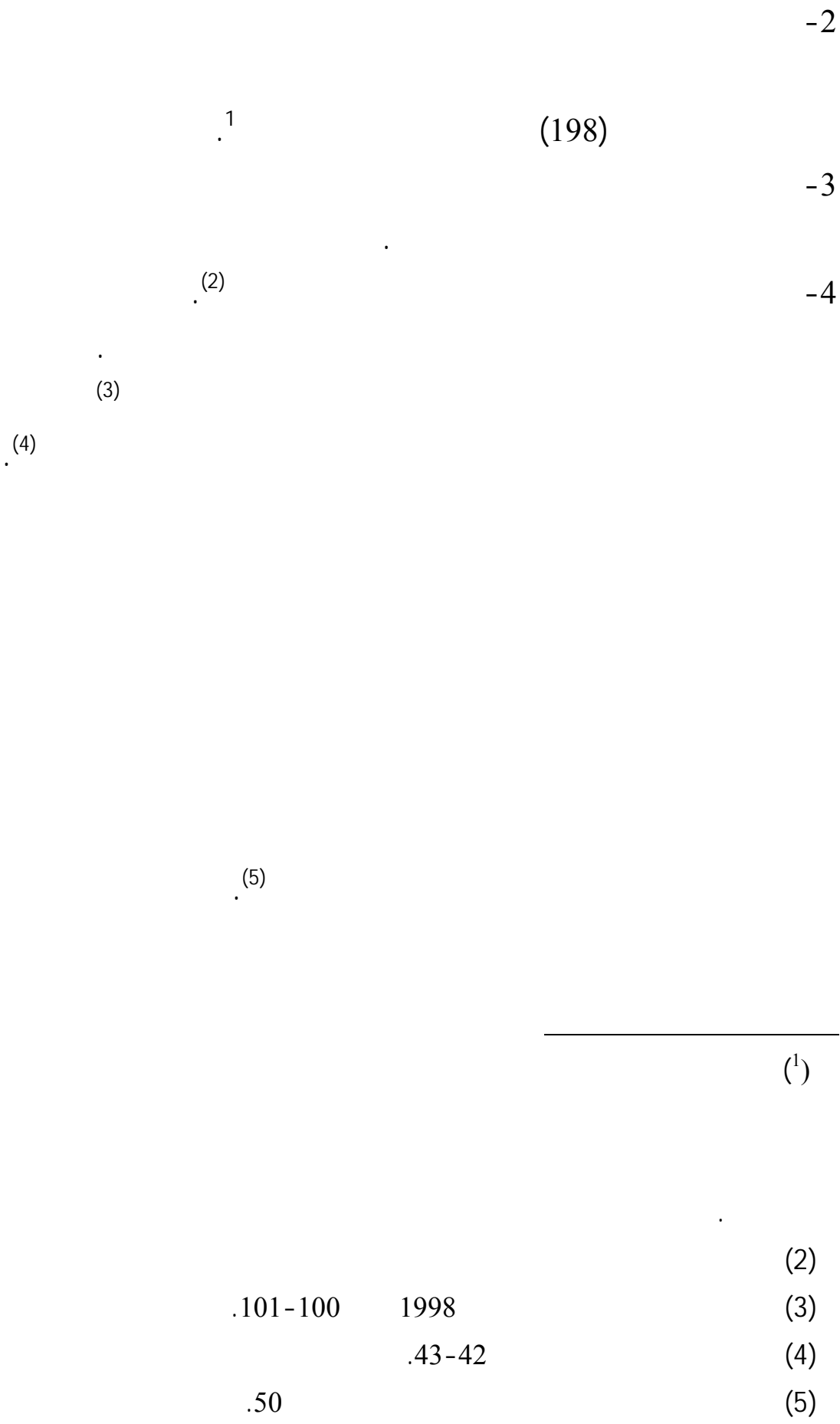
-1

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(1)

.49 2005

[www.a3mal.info/showthread](http://www.a3mal.info/showthread). (2)



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(1)  
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" : (1978) (14)

(2)"  
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. [www.freightdata.com](http://www.freightdata.com)

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.49 2000

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298 1997



1 .  
" "

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" "

.(Internet)

(3)

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2000 (1)

[www.emirsal.com](http://www.emirsal.com) " "

(2)

.599 (3)

2-1 2001

.7

**"Chatting"**

**.1**

chatting

" : chatting

(1)"

**.Chatting**

"central server"

(2)

chat room

e-mail

chatting

e-mail

e-mail

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(1) <http://searchsoa.techtarget.com/sdefinition/sid26-gci211777100.htm>

(2) [www.smartcomputing.com/articals.archive/r0502/18r02/18r02.pd2.guie/](http://www.smartcomputing.com/articals.archive/r0502/18r02/18r02.pd2.guie/)

<sup>(1)</sup> **E-mail :** .2

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(3)

"E-mail"

- - "Ray Tomlinson" "

send

message

cypnet

Ray Tomlinson <sup>(4)</sup>

electronic mail (1)

carrier

electronique  
" (2)

.80 2000 7 2000 - 6 19

(3) Andr e Bertrand: Internet et le droit, presses universitaires de france, 1999, p. 57 .

(4)

www.c.arad.com. :

1971

(1) @

. tomlinson@bbn-tenexa

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 " :  
 " :  
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chez at

(1)

- (2) "ou' ils de'finissent le courrier e'lectronique comme"une facult'e d  
 E'change asynchrone des messages entre ordinateurs  
 - p.breese et G. kaufman, quide Juridique de l'internet et du commerce  
 'electronique, vuibert,2000,p77.
- (3) "Method permettant d'e'changer des messages e'crits entre diff'e'rents  
 postes d'un r'eseau informatique".  
 - F. Colantonio, la protection du secret des couriers e'lectroniques en  
 Belgique : Aspect techniques, des criminology, 2002, p. 9.
- (4) "Electronic mail is" "a document created or received on an electronic  
 mail system including brief notes, more formal or substantive  
 narrative documents, and any attachments, such as word processing  
 and other electronic documents. Which may be transmitted with  
 message".

.322

.13 2005

"  
 .  
 (1)  
 : 1986  
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 (2)"  
 .  
 22  
 " : 2004  
 . "  
 2001 (85)  
 .

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- Karen M., Coon, E-mail, and the attorney-client privilege  
 Richmond journal of law and Technology, 2001.

www.Richmond.edu :

- (1) The electronic communication privacy act of 1986-ECPA.
- (2) The Electronic mail defined as: A form of communication by which private correspondence is transmitted over public and private telephone lines. in its most common form, messages are typed in to a computer terminal, and then transmitted over telephone lines to a recipient computer operated by an electronic mail company .if the intended addressee subscribes to the service, the message is stored by the company's computer "mail box" until the subscriber calls the company to retrieve its mail, which is then routed over the telephone system to the recipient's computer".

. [www.findlaw.com](http://www.findlaw.com) :

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.81

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.59-57

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(3) Kosiur, David, Understanding Electronic Commerce, op. cit, p. 39.

.2001 85

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.2001/37

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3.2

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.170

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.28	(1)
.152	(2)
.41	(3)

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.31

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.33

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.1861      2003

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.1861

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.335

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" :  
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.29 (1)

.86 (2)

.54 (3)

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**2.3.2**

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.68

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13/12/1996

93/999

" : (11/2)

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.57

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.1

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.445	"	(1)
.448	"	(2)
.84	"	(3)
.445	"	(4)

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(<sup>1</sup>) Thomson West: E-Commerce, The Internet, and law Cases and materials, American Casebook Series, p 45-49.

.445-446 (2)

.270-265 (3)

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132

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.45-49

(<sup>2</sup>) Thomson west: E-commerce, the internet, and law cases and materials, American casebook series, p 50 .

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**.2**

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II .

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-2003

12-10

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.45-43

1999

.64-65

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.87-86

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.46-47	2000	(1)
		(2)
.447		(3)

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11

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(2/6)

(1)

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(1) J.carbonnier, droit civil, introduction, less personnes, PUF.paris 1991, no.182; j. GHESTIN, G. GOUBEAUX et M fabre\_ magnan, traite de drott civil, introduction, generale, lgdj, paris 1994,NO.564; G. virassamy, note sous Cass. Civil. 1 ere, 8 nov. 1989. JCP 1990-1-21576, No. 4.

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(4) J.CARBONNIER, OP.cit.no.182, J.GHESTIN et autres ,OP, cit, no. 567.

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Art. 1315." celui qui réclame l'exécution d'une obligation doit la prouver. Réciproquement, celui qui se prétend libéré, doit justifier le paiement ou le fait qui a produit l'extinction de son obligation".

: (1971 71-941 du 26 nov.)

- " qui se rattachent au droit civil et particulièrement aux actes notariés, considérés comme actes authentiques, à l'exclusion de ceux qui concernent uniquement l'organisation et le régime du notariat.

(3) Cass.civ.3, 16 nov, 1997, Bull. Civ, II, n.993, p.300.

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(2) C.A. Paris 15 ch.B, 29 mars 1985, reformation, de T.G.I. de Bobiogny  
6 ch. 21 sept. 1982: D.1986,I.R..327, obs: Vasseur (M).

(3) Cass. Civ. 2 janv. 1998, D.1998, p. 192.

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[www.barasy.com/forum/showthread.php](http://www.barasy.com/forum/showthread.php) :

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Danniel ammar: prevue et vraismbalance, contribution a l'etude de la  
prevue technologique, RTD cv.n 3, juillet-september 1993, P499 et s.

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": (80/252 ) 1980/7/2 Les regles  
ci-dessus recoivent encore exception lorsque l'obligation est née d'un quasi-  
contrat, d'un délit ou d'un quasi-délit, ou lorsque l'une des parties, soit na

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pas eu la possibilite materielle ou morale de se procurer une prevue litterale de lacte juridique , soit a perdu le titre que lui servait de prevue litterale , par suite dun cas fortuit ou dune force majeure. Elles recoivent aussi exception lorsque une partie ou le depositaire na pas conserve le titre original et present une copie qui en est la repro-duction non seulement fidele mais aussi durable . est repute durable toute reproduction indelebile de loriginal que entraine une modifica- tion irreversible du support." .

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(1) Celui auquel on oppose un act sous seing prive, est oblige d'avouer ou de desavouer formellement son ecriture ou sa signature.

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(1) Sinsi , vin cenzo, electronic signature legislation, op, cit, p. 489.

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(3) Marie VARANDAT: consolidation des infrastructures a cles  
publique avant leur prochain decoulage, droit de l'informatique, mars  
2000, p. 22.

.105-103

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(1) Com., 2 dec. 1997, D. 1998, 192; jcp 1998, ed E. p. 178.

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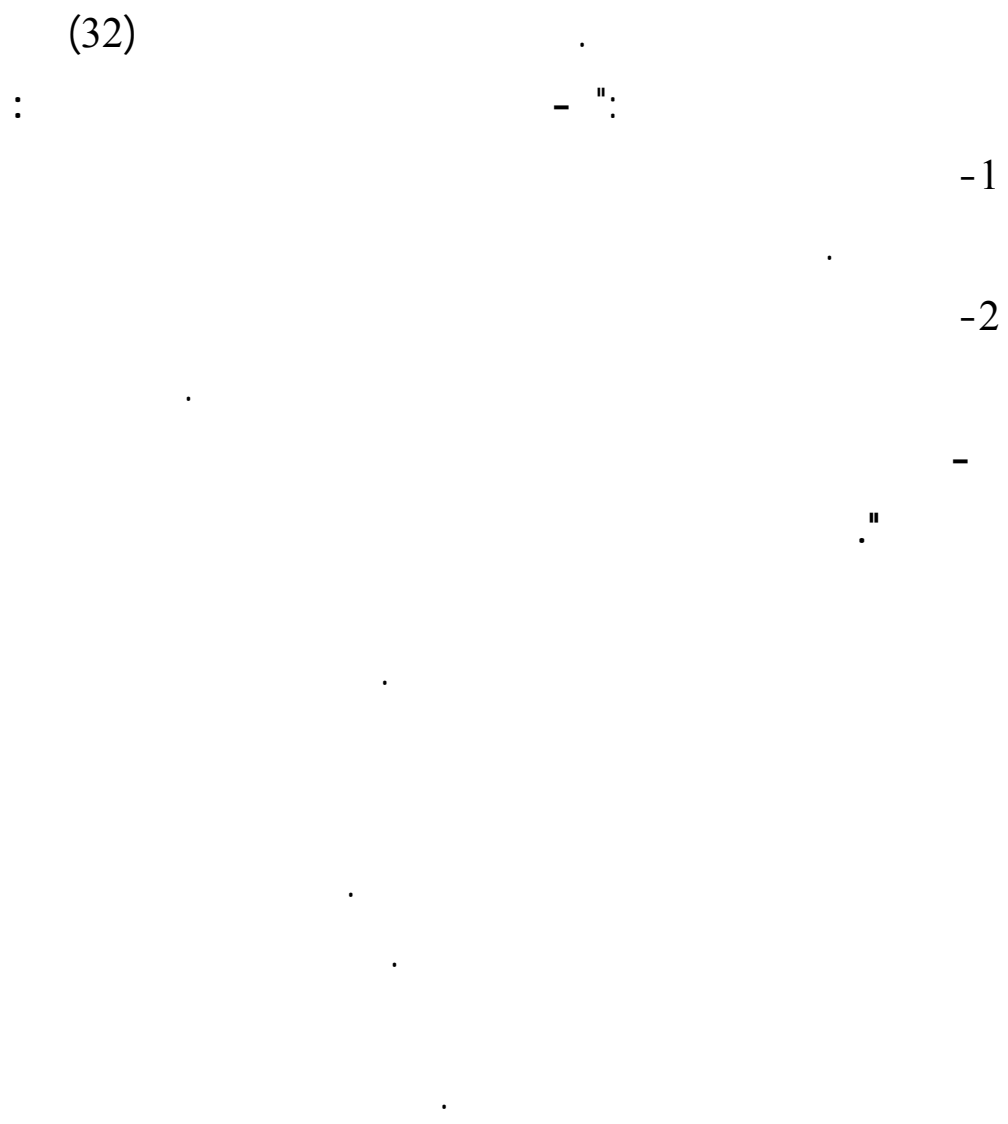
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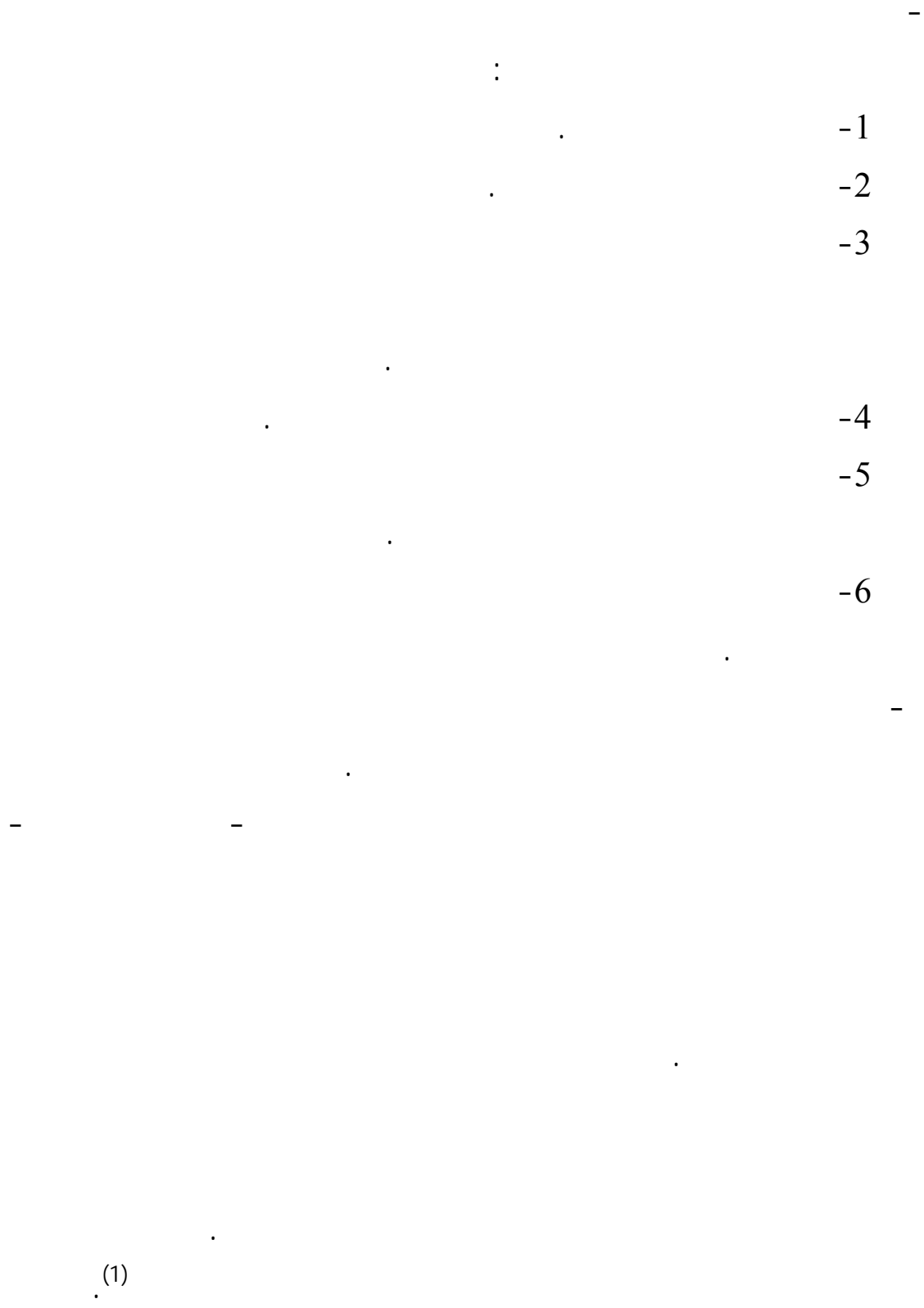
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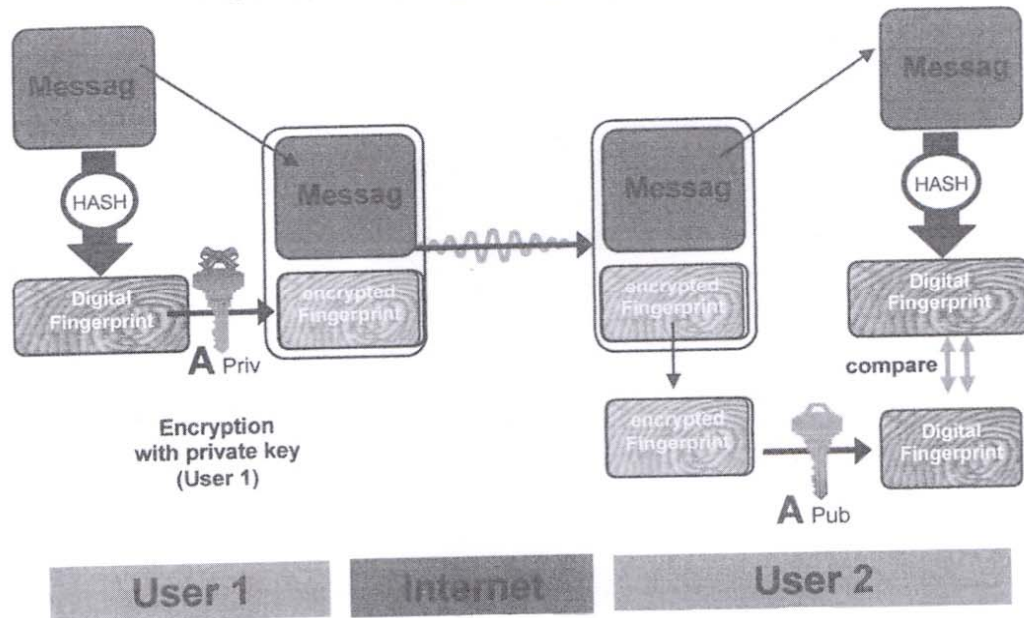
**The electronic communication privacy act of 1986-ECPA.**

**Thomson west: E-commerce, the internet**, and law cases and materials, American casebook series.

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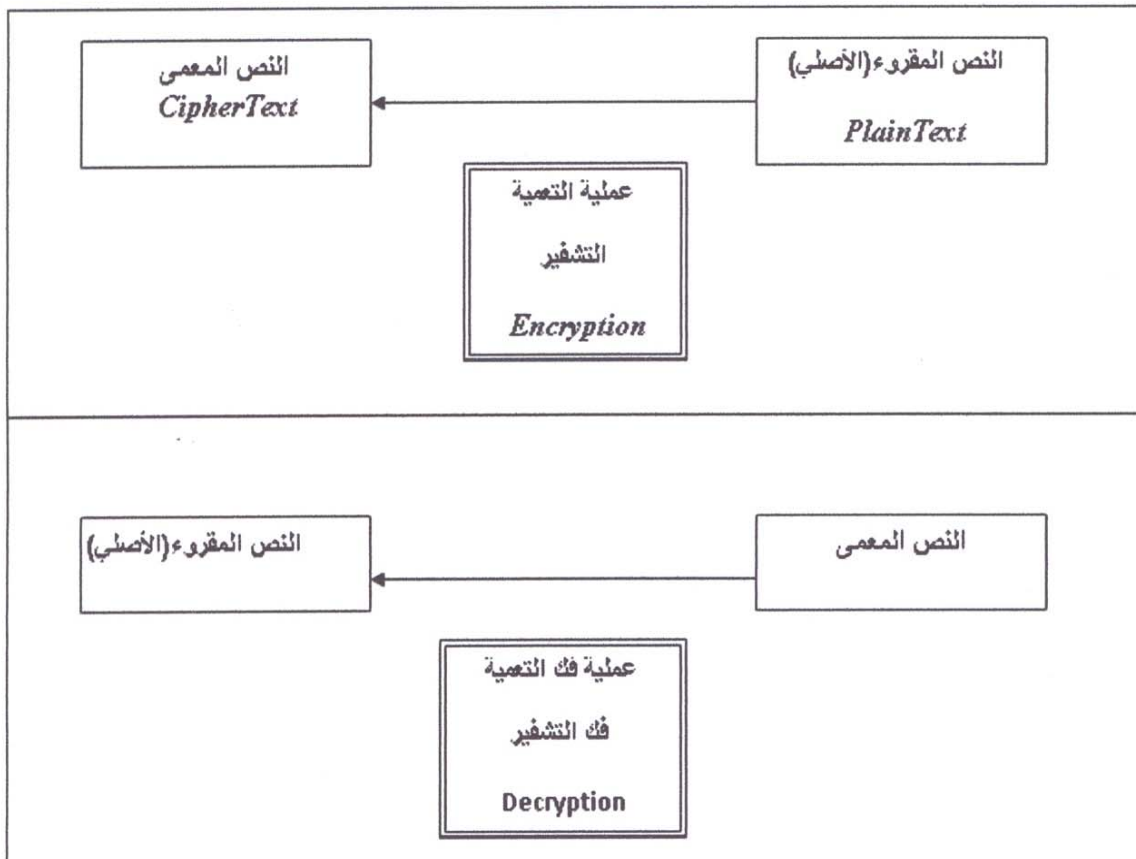
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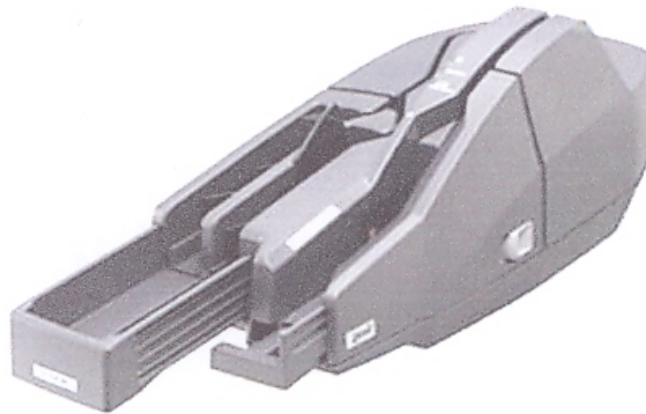




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